

Title 9-A: MAINE CONSUMER CREDIT CODE

Article 11: RENTAL-PURCHASE PRACTICES

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Maine Revised Statutes
Title 9-A: MAINE CONSUMER CREDIT CODE
Article 11: RENTAL-PURCHASE PRACTICES

§11-101. SHORT TITLE

This Article may be known and cited as the "Maine Consumer Credit Code - Rental-purchase Agreements." [1991, c. 787, (NEW).]

SECTION HISTORY
1991, c. 787, (NEW).

§11-102. PURPOSE; RULES OF CONSTRUCTION

1. This Article must be liberally construed and applied to promote its underlying purposes and policies.
[1991, c. 787, (NEW) .]

2. The underlying purposes and policies of this Article are to:

A. Simplify, clarify and modernize the law governing rental-purchase agreements; [1991, c. 787, (NEW) .]

B. Provide certain disclosures to consumers who enter into rental-purchase agreements and to promote consumer understanding of the terms of rental-purchase agreements; [1991, c. 787, (NEW) .]

C. Protect consumers against unfair practices by some rental-purchase dealers, having due regard for the interests of legitimate and scrupulous rental-purchase dealers; and [1991, c. 787, (NEW) .]

D. Permit and encourage the development of fair and economically sound rental-purchase practices.
[1991, c. 787, (NEW) .]

[1991, c. 787, (NEW) .]

SECTION HISTORY
1991, c. 787, (NEW).

§11-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Article, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause, supplement the provisions of this Article. [1991, c. 787, (NEW) .]

SECTION HISTORY
1991, c. 787, (NEW).

§11-104. APPLICATION

This Article applies to rental-purchase agreements or acts, practices or conduct related to a rental-purchase agreement if: [1991, c. 787, (NEW) .]

1. The rental-purchase agreement is entered into in this State; or

[1991, c. 787, (NEW) .]

2. The consumer is a resident of this State at the time the merchant, wherever located, offering the rental-purchase agreement solicits the rental-purchase agreement or modification of the rental-purchase agreement in this State, whether the solicitation is made personally, by mail or by telephone.

For the purposes of this Article, the residence of the consumer is the address given by the consumer as the consumer's residence in any writing signed by the consumer in connection with the rental-purchase agreement. Unless the consumer notifies the merchant of a new or different residence address, the given residence address is presumed to be unchanged.

[2001, c. 287, §1 (AMD) .]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §1 (AMD).

§11-105. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 787, (NEW) .]

1. "Administrator" means the administrator designated in Article VI, section 6-103.

[1991, c. 787, (NEW) .]

2. "Advertisement" means a commercial message in any medium that directly or indirectly aids, promotes or assists a rental-purchase agreement, but does not include in-store merchandising aids such as window signs and ceiling banners.

[2001, c. 287, §2 (AMD) .]

3. "Cash price" means the price for which the merchant would sell the property to the consumer for cash on the date of the rental-purchase agreement. The cash price must be reasonably related to the fair market value of the property. The cash price of new merchandise is reasonably related to fair market value if it is equal to or less than the amounts determined under the formula set forth in paragraph A.

A. The cash price of new merchandise may not exceed the amount produced by multiplying the merchant cost by the applicable factor set forth below. For purposes of this paragraph, "merchant cost" means the bona fide actual cost, including freight charges, of the rental property paid by the merchant to a wholesaler, distributor, manufacturer or other provider, net of volume rebates, discounts or other incentives received by the merchant at the time the merchant purchased the item. The maximum cash price must be computed as follows:

- (1) For appliances, the applicable factor is 1.75;
- (2) For electronics having merchant cost less than \$150, the applicable factor is 1.75;
- (3) For electronics having merchant cost greater than or equal to \$150, the applicable factor is 2.00;
- (4) For furniture and jewelry, the applicable factor is 2.50; and
- (5) For items not listed in subparagraphs (1) to (4), the applicable factor is 2.00. [2001, c. 287, §2 (NEW) .]

B. The cash price of used merchandise offered for rental may not exceed the maximum permitted cash price of the property when new and must be adjusted for other relevant factors. Other relevant factors include:

- (1) The duration of prior rentals and whether the item has been repaired one or more times;
- (2) Whether the consumer price of the general class of items to which the item belongs has decreased or increased since the merchant originally purchased it; and
- (3) The condition of the item. [2001, c. 287, §2 (NEW) .]

[2001, c. 287, §2 (AMD) .]

4. "Consumer" means an individual who rents personal property under a rental-purchase agreement used primarily for personal, family or household purposes.

[1991, c. 787, (NEW) .]

5. "Consummation" means the time at which a consumer becomes contractually obligated under a rental-purchase agreement for personal property used primarily for personal, family or household purposes.

[1991, c. 787, (NEW) .]

5-A. "Debt" means an obligation or alleged obligation of a consumer to surrender or return rental property or pay money arising out of a rental-purchase agreement.

[2001, c. 287, §3 (NEW) .]

5-B. "Location information" means a consumer's place of residence and the consumer's telephone numbers at that location and at the consumer's place of employment.

[2001, c. 287, §3 (NEW) .]

6. "Merchant" means a person who regularly provides the use of property through rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement.

[1991, c. 787, (NEW) .]

6-A. "Periodic payment" means the total payment the consumer will make for a specific rental period, including the rental payment, any administrative fees or delivery charges, taxes and fees or charges for optional products and services.

[2001, c. 287, §3 (NEW) .]

6-B. "Rental payment" means a payment to be made by a consumer for the right of possession and use of rental property for a specific rental period, but does not include taxes imposed on such payment.

[2001, c. 287, §3 (NEW) .]

6-C. "Rental period" means a week, month or other specific period of time during which the consumer has a right to possess and use the property after making the rental payment and applicable tax payment for such period.

[2001, c. 287, §3 (NEW) .]

7. "Rental-purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the property, but does not obligate or require the consumer to continue renting or using the property beyond the initial period.

[1991, c. 787, (NEW) .]

8. "Rental-purchase cost" means the total of charges payable by the consumer and imposed by the merchant as a condition of entering into and acquiring ownership of property under a rental-purchase agreement. "Rental-purchase cost" includes rental payments and any initial administrative fees, but does not include taxes, delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

[2001, c. 287, §3 (NEW) .]

9. "Total of payments to acquire ownership" means the total of all charges payable by the consumer to acquire ownership of the rental property. "Total of payments to acquire ownership" includes any initial administrative fee, the total of all rental payments and taxes, but does not include delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

[2001, c. 287, §3 (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§2,3 (AMD).

§11-106. INAPPLICABILITY OF OTHER LAWS; EXEMPT TRANSACTIONS

1. A rental-purchase agreement that complies with this Article is not considered or governed by the laws related to:

A. A "home solicitation sale" as defined in section 3-501; [1991, c. 787, (NEW) .]

B. A "consumer credit sale" as defined in section 1-301, subsection 11; except that the following sections of the Maine Consumer Credit Code apply: section 1-107, waiver, agreement to forego rights, settlement of claims; section 1-111, record retention; section 1-201, territorial application; section 1-202, exclusions; section 1-203, jurisdiction and service of process; section 2-507, attorney's fees and collection costs; section 3-202, notice to consumer; section 3-203, notice of assignment; section 3-305, no assignment of earnings; section 3-306, authorization to confess judgment prohibited; section 3-307, certain negotiable instruments prohibited; section 3-309, referral sales; section 3-403, assignee subject to defenses; section 5-104, no garnishment before judgment; section 5-105, limitation on garnishment; section 5-106, no discharge from employment for garnishment; section 5-112, creditor's right to take possession after default; section 5-113, venue; section 5-114, stay of enforcement of judgment; section 5-115, misrepresentation; section 5-116, illegal, fraudulent or unconscionable conduct in attempted collection of debts; section 5-117, prohibited practices; section 5-201, effect of violations on rights of parties; section 5-202, refunds and penalties as setoff to obligation; section 5-301, violations; Article VI in its entirety, except that the term "original unpaid balances arising from consumer credit transactions" described in section 6-203, subsection 2 means "gross rental receipts from rental-purchase agreements" for purposes of administration of this Article; Article 8-A requirements related to model forms; and Federal Truth in Lending Act, 15 United States Code, Section 1666a requirements related to credit reports; [2011, c. 427, Pt. D, §15 (AMD) .]

C. A "consumer lease" as defined in section 1-301, subsection 13; [1991, c. 787, (NEW) .]

D. A "sale of goods" as defined in section 1-301, subsection 33; or [1991, c. 787, (NEW) .]

E. A "security interest" as defined in Title 11, section 1-201, subsection (37). [1991, c. 787, (NEW).]

[2011, c. 427, Pt. D, §15 (AMD) .]

2. This Article does not apply to:

A. A rental-purchase agreement made primarily for business, commercial or agricultural purposes or made with a governmental agency or instrumentality; [1991, c. 787, (NEW).]

B. A lease of a safe-deposit box; [1991, c. 787, (NEW).]

C. A lease or bailment of personal property that is incidental to the lease of real property and does not provide the consumer with an option to purchase the leased property; [1991, c. 787, (NEW).]

D. A lease of an automobile; or [1991, c. 787, (NEW).]

E. A lease of real estate. [1991, c. 787, (NEW).]

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW). 2011, c. 427, Pt. D, §15 (AMD).

§11-107. GENERAL REQUIREMENTS OF DISCLOSURE

1. The merchant shall disclose to the consumer the information required by this Article. In a transaction involving more than one merchant, only one merchant need make the disclosure but all merchants are bound by the disclosure.

[1991, c. 787, (NEW) .]

2. The disclosure must be made during or before consummation of the rental-purchase agreement.

[1991, c. 787, (NEW) .]

3. The disclosure must be made clearly and conspicuously, in a clear and coherent manner, in writing, in type size not less than 8-point standard type and appropriately divided and captioned by various sections. A copy of the rental-purchase agreement must be provided to the consumer. If more than one consumer executes a rental-purchase agreement, the merchant shall provide a copy of the agreement to each consumer. The disclosure required under section 11-108 must be made above the line for the consumer's signature. If disclosures are made on more than one page, the contract complies with this subsection if the consumer signs each page of the contract.

[2001, c. 287, §4 (AMD) .]

4. If a disclosure becomes inaccurate as a result of any act, occurrence or agreement by the consumer after delivery of the required disclosure, the inaccuracy is not a violation of this Article.

[1991, c. 787, (NEW) .]

5. A merchant may disclose information that is not required by this Article if the additional information is not stated, used or placed in a manner that contradicts, obscures or distracts attention from the required information.

[2001, c. 287, §5 (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§4,5 (AMD).

§11-108. DISCLOSURE

1. For each rental-purchase agreement, the merchant shall disclose in the agreement the following items, as applicable:

A. [2001, c. 287, §6 (RP).]

B. [2001, c. 287, §6 (RP).]

C. A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount or cost of repair of the property, whichever is least, if, and as of the time, it is lost, stolen, damaged or destroyed; [2001, c. 287, §7 (AMD).]

D. A brief description of the rented property sufficient to identify the property to the consumer and the merchant, including an identification number if applicable and a statement indicating whether the property is new or used. A statement that indicates new property is used is not a violation of this Article; [1991, c. 787, (NEW).]

E. A statement of the cash price of the property. A statement of the aggregate cash price of all items involving the rental of 2 or more items as a set satisfies this requirement; [1991, c. 787, (NEW).]

F. [2001, c. 287, §8 (RP).]

G. A statement that the total of payments to acquire ownership does not include other charges the consumer may incur, such as late-payment, payment pick-up fees and charges or fees for optional products or services. Late-payment, payment pick-up fees and charges or fees for optional products or services must be separately disclosed in the agreement; [2001, c. 287, §9 (AMD).]

H. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early-purchase option, the price at which the property may be purchased and the formula or method for determining that price; [1991, c. 787, (NEW).]

I. A description of any damage to the property; [1991, c. 787, (NEW).]

J. A statement identifying the merchant as the party responsible for maintaining or servicing the property while it is rented, together with a description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the property, that warranty is transferred to the consumer if allowed by the terms of the warranty; [1991, c. 787, (NEW).]

K. The date of the transaction and the identities of the merchant and the consumer; [1991, c. 787, (NEW).]

L. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property to the merchant in good repair on or before the expiration of any rental period along with any past due rental payments; [2001, c. 287, §9 (AMD).]

M. Notice of the right to reinstate an agreement as provided in this Article; [1991, c. 787, (NEW).]

N. A description of what conditions constitute default by the consumer; and [1991, c. 787, (NEW).]

O. A notice to the consumer pursuant to section 3-202. [1991, c. 787, (NEW).]

[2001, c. 287, §§6 - 9 (AMD).]

2. To the extent applicable, the following information must be disclosed and grouped together in each rental-purchase agreement:

A. The amount of the payment required at or before consummation of the agreement or delivery of the property, whichever is later, using the term "initial payment." The merchant shall itemize each component of the initial payment by type and amount, including any initial administrative fee, delivery charge, rental payment, taxes and charges or fees for optional products or services; [2001, c. 287, §10 (NEW).]

B. The amount of the "regular periodic payment," using that term. The merchant shall itemize each component of the regular periodic payment by type and amount, including the rental payment, taxes and charges or fees for optional products or services. If the final periodic payment is less than or equal to the regular periodic payment, the components of the final periodic payment need not be itemized; [2001, c. 287, §10 (NEW).]

C. The "total of payments to acquire ownership," using that term and a brief description, such as "the total amount you will have paid, including any initial administrative fee, the total of all rental payments and taxes, if you acquire ownership of the property by making all scheduled payments, but not including late charges or payment pick-up fees you may incur or charges or fees for optional products or services you may elect to purchase"; [2001, c. 287, §10 (NEW).]

D. A statement in substantially the following form in no less than 8-point boldface type: "YOU WILL BE RENTING THE PROPERTY. YOU WILL NOT ACQUIRE EQUITY OR OWNERSHIP RIGHTS IN THE PROPERTY UNLESS YOU MAKE ALL PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP."; [2001, c. 287, §10 (NEW).]

E. The following statement: "Other important terms. See your rental-purchase agreement for additional important information on termination, purchase option, reinstatement rights, warranties, maintenance responsibilities, late charges and payment pick-up fees and your liability for loss, theft, damage or destruction of the property."; and [2001, c. 287, §10 (NEW).]

F. The "payment schedule," using that term, and a description of the number, amount and due dates or periods of payments scheduled under the agreement. A merchant may also disclose alternative periodic payments and payment schedules. [2001, c. 287, §10 (NEW).]

[2001, c. 287, §10 (NEW).]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§6-10 (AMD). 2001, c. 287, §9 (AMD).

§11-109. PROHIBITED PRACTICES

A rental-purchase agreement may not contain: [1991, c. 787, (NEW).]

1. A confession of judgment;

[1991, c. 787, (NEW).]

2. A negotiable instrument;

[1991, c. 787, (NEW).]

3. A security interest or any other claim of a property interest in any goods except those goods delivered by the merchant pursuant to the rental-purchase agreement;

[1991, c. 787, (NEW) .]

4. A wage assignment;

[1991, c. 787, (NEW) .]

5. A waiver by the consumer of claims or defenses;

[1991, c. 787, (NEW) .]

6. A provision authorizing the merchant or a person acting on the merchant's behalf to enter on the consumer's premises or commit any breach of the peace in repossession of goods;

[1991, c. 787, (NEW) .]

7. A provision requiring the purchase from the merchant of a liability damage waiver or insurance for the merchandise;

[1991, c. 787, (NEW) .]

8. A provision requiring the payment of a late charge unless a rental payment is more than 3 days late for an agreement that is renewed on a weekly basis or more than 5 days late for an agreement that is renewed less frequently than on a weekly basis;

[1991, c. 787, (NEW) .]

9. A provision requiring a payment at the end of the rental-purchase agreement period in excess of or in addition to a regular periodic payment in order for the consumer to acquire ownership of the property or payment of rental payments in excess of the total amount necessary to acquire ownership of the property;

[1991, c. 787, (NEW) .]

10. A penalty for early termination of a rental-purchase agreement or for the return of an item at any time;

[1991, c. 787, (NEW) .]

11. A provision for payment by a cosigner of the rental-purchase agreement of any fees or charges that could not be assessed to the consumer as part of the rental-purchase agreement; or

[1991, c. 787, (NEW) .]

12. An offer of insurance from the merchant to the consumer.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW).

§11-110. CALCULATION OF LATE CHARGES

Any late charge assessed pursuant to section 11-109, subsection 8 may not exceed the greater of 5% of the delinquent payment amount or \$3. Only one late charge may be assessed on any delinquent payment, regardless of how long the payment remains unpaid. [2001, c. 287, §11 (AMD).]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §11 (AMD).

§11-111. ALLOWABLE CHARGES

In addition to rental payments, a merchant may contract for and receive the following charges or fees. [2001, c. 287, §12 (AMD).]

1. An initial administrative fee not to exceed \$15 may be assessed but the fee must be refunded to the consumer if the rental agreement is not consummated. If a consumer enters into more than one rental-purchase agreement with a merchant on the same day, only one initial administrative fee may be assessed.

[2001, c. 287, §12 (AMD).]

2. An optional delivery charge may not exceed \$30 for 3 or fewer items actually delivered or \$60 for 4 or more items actually delivered.

[2001, c. 287, §12 (AMD).]

3. An optional payment pick-up fee may not exceed \$7.50 and may be assessed only once per payment.

[2001, c. 287, §12 (AMD).]

4. A liability damage waiver fee may be contracted for and received pursuant to section 11-115.

[1991, c. 787, (NEW).]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §12 (AMD).

§11-112. DEFAULT; NOTICE OF DEFAULT AND RIGHT TO CURE

1. An agreement of the parties to a rental-purchase agreement with respect to default on the part of the consumer is enforceable only to the extent that the consumer fails to renew an agreement and fails to return the rented property or make arrangements for its return as provided for by the agreement.

[1991, c. 787, (NEW).]

2. In consumer rental-purchase agreements, after a consumer is in default for 3 business days and does not voluntarily surrender possession of the rented property, a merchant may give the consumer the notice provided in this section. A merchant gives the notice to the consumer under this section when the merchant delivers notice in the same manner as a notice provided under the Maine Consumer Credit Code, section 5-110.

[1991, c. 787, (NEW).]

3. The notice must be in writing and conspicuously state the name, address and telephone number of the merchant to whom payment is made, a brief identification of the transaction, the consumer's right to cure the default, the amount of payment and the date the payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(Name, address and telephone number of merchant)

(Account number, if any)

(Brief identification of transaction)

(Date) is LAST DATE FOR PAYMENT

(Amount) is the AMOUNT NOW DUE

You have failed to renew your rental agreement(s). If you pay the AMOUNT NOW DUE (above) by the LAST DATE FOR PAYMENT (above), you may continue with the contract as though you had renewed on time. If you do not pay by that date, we may exercise our rights under the law. You may be required to pay reasonable costs authorized by law.

PLEASE ALSO NOTE: As of the LAST DATE FOR PAYMENT (above) you will owe the following additional payments:.

(date due)

(amount)

In order to cure your account fully, the payment or payments listed above must also be paid in full on or before the LAST DATE FOR PAYMENT.

If you are late again within the next 6 months in making your payments, we may exercise our rights without sending you another notice. If you have questions, promptly write or telephone (name of merchant).

[1991, c. 787, (NEW) .]

4. With respect to consumer rental-purchase agreements with payments or options to renew more frequently than monthly, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until 3 business days after notice of the consumer's right to cure is given. With respect to all other rental-purchase agreements, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until 5 business days after notice of the consumer's right to cure is given.

[1991, c. 787, (NEW) .]

5. After notice is given and until expiration of the minimum applicable period, a consumer may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due at the same time of the tender.

[1991, c. 787, (NEW) .]

6. This section and the provisions on waiver, agreements to forego rights and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are rented and a merchant from enforcing the security interest in the goods at any time after default. In any enforcement proceeding, a merchant shall affirmatively plead and prove either that the notice to cure is not required or that the merchant has given the required notice. The failure to plead does not invalidate any action taken by the merchant that is otherwise lawful and if the merchant had rightfully repossessed any collateral the repossession does not constitute conversion.

[1991, c. 787, (NEW) .]

7. Any repossession of rented property in violation of this section is void and the merchant is liable for conversion.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW).

§11-113. REINSTATEMENT

1. A consumer who fails to make a timely rental payment but has returned or surrendered the rental property to the merchant within 7 days after missing a payment or within 2 business days of the merchant's request, whichever comes later, may reinstate the agreement without losing any rights or options that exist under the agreement by payment of:

A. All past due rental charges; and [1991, c. 787, (NEW) .]

B. Other charges expressly provided in this Article, except any initial administrative fee. [2001, c. 287, §13 (AMD) .]

[2001, c. 287, §13 (AMD) .]

2.

[2001, c. 287, §13 (RP) .]

3.

[2001, c. 287, §13 (RP) .]

4. A consumer who has returned or surrendered the rental property within the reinstatement period set forth in subsection 1 may reinstate the agreement during a period of not less than 180 days after the date of the missed payment.

[2001, c. 287, §13 (AMD) .]

5. Nothing in this section prevents a merchant from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate.

[1991, c. 787, (NEW) .]

6. Upon reinstatement, the merchant shall provide the consumer with the same property or substitute property of comparable quality and condition.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §13 (AMD).

§11-114. CONSUMER'S RIGHT TO ACQUIRE OWNERSHIP WHEN 50% OF PAYMENTS EQUALS CASH PRICE

1. The total number of rental payments necessary to acquire ownership of the property under any rental-purchase agreement may not exceed 2 times the cash price of the property. When 50% of all rental payments made by a consumer equals the cash price of the property disclosed to the consumer pursuant to section 11-108, subsection 1, paragraph E, the consumer acquires ownership of the property and the rental-purchase agreement terminates.

[1991, c. 787, (NEW) .]

2. At any time after tendering an initial lease payment, a consumer may acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount equal to the amount by which the cash price of the rented property exceeds 50% of all rental payments made by the consumer.

[1991, c. 787, (NEW) .]

3. It is not a violation of this section for the merchant and the consumer to agree in writing to allow the consumer to acquire ownership of the property for a lesser amount than the maximum limits set forth in subsections 1 and 2.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW) .

§11-115. LIABILITY DAMAGE WAIVERS; FEES

In addition to the other charges permitted by this Article, the parties may contract for a liability damage waiver. The fee for the liability damage waiver may not exceed the greater of 5% of any periodic rental payment due or \$3 in the case of any rental-purchase agreement with renewal periods more frequent than monthly or the greater of 5% of any periodic rental payment due or \$7.50 in the case of any rental-purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this Article is subject to the following prohibitions and requirements. [2001, c. 287, §14 (AMD) .]

1. The restrictions, conditions and exclusions of the liability damage waiver must be disclosed on a separate contract, sheet or handout given to the consumer prior to entering into the rental-purchase agreement. The separate contract, sheet or handout must be signed or otherwise acknowledged as received by the consumer prior to entering into the rental-purchase agreement.

[1991, c. 787, (NEW) .]

2. A merchant may not sell or offer to sell a liability damage waiver unless all restrictions, conditions and exclusions are printed in the rental-purchase agreement or in a separate agreement in 8-point type or larger, written in ink or typewritten on the face of the rental-purchase agreement in a blank space provided. The liability damage waiver may exclude only loss or damage that is caused intentionally by the consumer or resulting from the consumer's willful or wanton misconduct to the property that is the subject of the rental-purchase agreement.

[1991, c. 787, (NEW) .]

3. The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver and must display in 8-point boldface type the following notice or a notice in a substantially similar form:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

[2001, c. 287, §15 (AMD) .]

4. A liability damage waiver may not be a factor in the approval by the merchant of the rental-purchase transaction and the contract may take effect only after the consumer has signed or initialed an affirmative request to purchase the liability damage waiver after written disclosure of the cost of the liability damage waiver.

[2001, c. 287, §16 (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§14-16 (AMD).

§11-116. RECEIPTS AND ACCOUNTS

A merchant shall furnish the consumer a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is made in person during normal working hours. The merchant shall provide the consumer with a written statement of account within 7 days of the consumer's request. [1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW).

§11-117. RENEGOTIATIONS AND EXTENSIONS

1. A renegotiation occurs when an existing rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same merchant and consumer. A renegotiation is considered a new agreement requiring new disclosures. The following are not considered renegotiations:

- A. The addition or return of property in a multiple-item agreement or the substitution of the rental property, if that addition, return or substitution does not affect the total number, total amount or timing of all payments necessary to acquire ownership; [1991, c. 787, (NEW) .]
- B. A deferral or extension of one or more periodic payments or portions of a periodic payment; [1991, c. 787, (NEW) .]
- C. A reduction in charges in the agreement; and [1991, c. 787, (NEW) .]
- D. An agreement involved in a court proceeding. [1991, c. 787, (NEW) .]

[1991, c. 787, (NEW) .]

2. Disclosures are not required for any extension of a rental-purchase agreement.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW).

§11-118. ADVERTISING AND POINT-OF-SALE DISCLOSURE

1. An advertisement for a rental-purchase agreement that refers to or states the dollar amount of any payment for a specific item must state clearly and conspicuously:

- A. That the transaction advertised is a rental-purchase agreement; [1991, c. 787, (NEW).]
- B. The rental-purchase cost; and [2001, c. 287, §17 (AMD).]
- C. That the consumer does not acquire ownership rights until the total of payments to acquire ownership is paid. [2001, c. 287, §17 (AMD).]

[2001, c. 287, §17 (AMD) .]

2. For any item of property displayed or offered for rental-purchase, the merchant shall display a point-of-rental placard. The point-of-rental placard must disclose the rental payment amount and, in numerals and lettering at least as prominent as the rental payment amount, the following:

- A. The number of rental payments necessary to acquire ownership of the item and the rental period; [2001, c. 287, §17 (AMD).]
- B. The rental-purchase cost of the item; and [2001, c. 287, §17 (AMD).]
- C. Whether the item is new or used. [2001, c. 287, §17 (NEW).]

Labeling a new item as used is not a violation of this Article.

[2001, c. 287, §17 (AMD) .]

3. An owner or the personnel of a medium in which an advertisement appears or through which an advertisement is disseminated is not liable under this section.

[1991, c. 787, (NEW) .]

4. A merchant may make the disclosures required by subsection 2 in the form of a list or catalog that is readily available to the consumer if the property is not displayed in the merchant's showroom or if displaying a point-of-rental placard would be impractical due to the size of the property.

[2001, c. 287, §17 (NEW) .]

This section does not apply to an advertisement that does not refer to or state the amount of any payment. [1991, c. 787, (NEW).]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §17 (AMD).

§11-119. COLLECTION ACTIVITY

The following provisions govern the debt collection practices of merchants under this Article. [2001, c. 287, §18 (RPR).]

1. A merchant communicating with any person other than the consumer for the purpose of acquiring location information about the consumer may:

- A. Identify the merchant and state that the merchant is confirming or correcting location information concerning the consumer; [2001, c. 287, §18 (NEW).]
- B. Not state that the consumer owes any debt; [2001, c. 287, §18 (NEW).]

C. Not communicate with any such person more than once, unless requested to do so by that person or unless the merchant reasonably believes that the earlier response of that person was erroneous or incomplete and that the person now has correct or complete location information; [2001, c. 287, §18 (NEW).]

D. Not communicate by postcard; [2001, c. 287, §18 (NEW).]

E. Not use language or a symbol on an envelope or in the contents of a communication effected by the mails or by telegram that indicates that the communication relates to the collection of a debt; and [2001, c. 287, §18 (NEW).]

F. After the merchant knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, that attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the merchant. [2001, c. 287, §18 (NEW).]

[2001, c. 287, §18 (NEW).]

2. Without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, a merchant may not communicate with a consumer in connection with the collection of any debt:

A. At an unusual time or place or a time or place known or that should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a merchant shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location; [2001, c. 287, §18 (NEW).]

B. If the merchant knows that the consumer is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the merchant or unless the attorney consents to direct communication with the consumer; or [2001, c. 287, §18 (NEW).]

C. At the consumer's place of employment if the merchant knows or has reason to know that the consumer's employer prohibits the consumer from receiving a communication. [2001, c. 287, §18 (NEW).]

[2001, c. 287, §18 (NEW).]

3. Except as provided in subsection 1, without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, or except as reasonably necessary to effectuate a post-judgment judicial remedy, a merchant may not communicate, in connection with the collection of a debt, with a person other than the consumer, the consumer's attorney, a consumer reporting agency if otherwise permitted by law or the attorney of the merchant.

[2001, c. 287, §18 (NEW).]

4. A merchant may not engage in conduct the natural consequence of which is to harass, oppress or abuse a person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of a person; [2001, c. 287, §18 (NEW).]

B. The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader; [2001, c. 287, §18 (NEW).]

C. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 209-B; [2013, c. 588, Pt. C, §3 (AMD).]

D. The advertisement for sale of a debt to coerce payment of the debt; [2001, c. 287, §18 (NEW).]

E. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass a person at the called number; [2001, c. 287, §18 (NEW).]

F. Except as provided in subsection 1, the placement of telephone calls without meaningful disclosure of the caller's identity; and [2001, c. 287, §18 (NEW).]

G. The use of "shame cards," "shame automobiles" or similar devices, except that delivery vehicles used by the merchant in the ordinary course of business may not be considered "shame automobiles." [2001, c. 287, §18 (NEW).]

[2013, c. 588, Pt. C, §3 (AMD).]

5. A merchant may not use a false, deceptive or misleading representation or means in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The false representation or implication that the merchant is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile; [2001, c. 287, §18 (NEW).]

B. The false representation of the character, amount or legal status of a debt; [2001, c. 287, §18 (NEW).]

C. The false representation or implication that an individual is an attorney or that a communication is from an attorney; [2001, c. 287, §18 (NEW).]

D. The representation or implication that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, attachment or sale of property or wages of a person, unless that action is lawful and the merchant intends to take that action; [2001, c. 287, §18 (NEW).]

E. The threat to take an action that may not legally be taken or that is not intended to be taken; [2001, c. 287, §18 (NEW).]

F. The false representation or implication that a sale, referral or other transfer of any interest in a debt will cause the consumer to:

(1) Lose a claim or defense to payment of the debt; or

(2) Become subject to a practice prohibited by this Article; [2001, c. 287, §18 (NEW).]

G. The false representation or implication that the consumer committed a crime or other conduct in order to disgrace the consumer; [2001, c. 287, §18 (NEW).]

H. Communicating or threatening to communicate to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed; [2001, c. 287, §18 (NEW).]

I. The use or distribution of a written communication that simulates or is falsely represented to be a document authorized, issued or approved by a court, official or agency of the United States or any state, or that creates a false impression as to its source, authorization or approval; [2001, c. 287, §18 (RPR).]

J. The use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer; [2001, c. 287, §18 (NEW).]

K. The false representation or implication that accounts have been turned over to innocent purchasers for value; [2001, c. 287, §18 (NEW).]

L. The false representation or implication that documents are legal process; [2001, c. 287, §18 (NEW).]

M. The use of a business, company or organization name other than the true name of the merchant's business, company or organization; [2001, c. 287, §18 (NEW).]

N. The false representation or implication that documents are not legal process forms or do not require action by the consumer; or [2001, c. 287, §18 (NEW).]

O. The false representation or implication that a merchant operates or is employed by a consumer reporting agency, as defined by Title 10, section 1308, subsection 3. [2013, c. 588, Pt. C, §4 (AMD).]

[2013, c. 588, Pt. C, §4 (AMD).]

6. A merchant may not use unfair or unconscionable means to collect or attempt to collect a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of an amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law; [2001, c. 287, §18 (NEW).]

B. The solicitation by a merchant of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution; [2001, c. 287, §18 (NEW).]

C. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument; [2001, c. 287, §18 (NEW).]

D. Causing charges to be made to a person for communications by concealment of the true purpose of the communication. These charges include, but are not limited to, collect telephone calls and telegram fees; [2001, c. 287, §18 (NEW).]

E. Communicating with a consumer regarding a debt by postcard; [2001, c. 287, §18 (NEW).]

F. Using language or a symbol, other than the merchant's address and business name, on an envelope when communicating with a consumer in connection with a debt; or [2001, c. 287, §18 (NEW).]

G. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a debt. [2001, c. 287, §18 (NEW).]

[2001, c. 287, §18 (NEW).]

SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §18 (RPR). 2013, c. 588, Pt. C, §§3, 4 (AMD).

§11-120. ENFORCEMENT; PENALTIES

A merchant who violates this Article or any rule issued by the administrator is subject to the following: [1991, c. 787, (NEW).]

1. After notice and hearing, a cease and desist order and order of restitution from the administrator;

[1991, c. 787, (NEW).]

2. A civil action, by the administrator through the Attorney General, after which a court, upon a finding of repeated or willful violations or of violation of an assurance of discontinuance, may assess a civil penalty of not more than \$5,000; and

[1991, c. 787, (NEW).]

3. A civil action by an aggrieved consumer in which the consumer may recover actual damages or \$250, whichever is greater, plus costs of the action and reasonable attorney's fees.

[1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW) .

§11-121. EFFECTIVE DATE

This Article takes effect January 1, 1993. [1991, c. 787, (NEW) .]

SECTION HISTORY

1991, c. 787, (NEW) .

§11-122. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A merchant who enters into a rental-purchase agreement with a consumer shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the merchant is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. This section does not apply to a supervised financial organization. [2001, c. 262, Pt. A, §4 (NEW) .]

SECTION HISTORY

2001, c. 262, §A4 (NEW) .

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